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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,698	06/24/2002	Ernst-Jurgen Hake	026032-3851	4624

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EXAMINER
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EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/049,698	HAKE ET AL.
	Examiner	Art Unit
	Joseph F Edell	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 June 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 25-46 is/are pending in the application.

4a) Of the above claim(s) 32-35, 40, 42-44 and 46 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 25-31, 36-39, 41 and 45 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 June 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,10.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Species I (Figures 1-4) in Paper No. 9 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Applicant states that claims 25-31, 36-41, 45, and 46 read on the elected species. However, only claims 25-31, 36-39, 41, and 45 read on the elected species.

### *Priority*

2. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)). The specific reference to any prior nonprovisional application must include the relationship (i.e., continuation, divisional, or continuation-in-part) between the applications except when the reference is to a prior application of a CPA assigned the same application number.

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the electromagnet

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because the abstract exceeds 150 words. Correction is required. See MPEP § 608.01(b).

6. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### ***Arrangement of the Specification***

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in

upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

#### *Claim Objections*

7. Claims 25, 29, and 45 are objected to because of the following informalities:
  - a. claim 25, line 14, "energy storage device" should read "an energy storage device";
  - b. claim 25, line 18, "energy storage device" should read "the energy storage device";

- c. claim 25, line 21, "energy storage device" should read "the energy storage device";
- d. claim 29, line 2, "impact are" should read "impact is";
- e. claim 29, line 4, "means are" should read "means is";
- f. claim 45, line 3, "means limit" should read "means limits".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 25, 26, 37-39, and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 25 recites the limitation "the pivoting motion" in line 22. There is insufficient antecedent basis for this limitation in the claim.

11. Claims 26 and 39 recite the limitation "its" in lines 3 and 4 as well as lines 2 and 3, respectively. There is insufficient antecedent basis for this limitation in the claims.

12. Claim 34 recites the limitation "the torsion spring" in line 2. There is insufficient antecedent basis for this limitation in the claim

13. Regarding claims 37 and 38, the phrase "pocket-like" renders the claims indefinite because the meets and bounds of the claims are not clearly set forth, thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

14. Claim 39 uses a "means" clause to recite a claim element as a means for performing a specified function. However, it is unclear whether the applicant is invoking 35 U.S.C. 112, 6<sup>th</sup> paragraph in using the word "means" in claim 39. Because "means" has a distinct meaning within the U.S. Patent system and patent law in accordance with 35 U.S.C. 112, 6<sup>th</sup> paragraph ("means plus function"), the applicant should delete or substitute another phrase for "by means of an electromagnet" from claim 39, as this reference seems unintended in this case. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

15. Regarding claim 41, the phrase "pocket-shaped" renders the claim indefinite because the meets and bounds of the claim are not clearly set forth, thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

#### ***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. Claims 25, 26, 30, and 45, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,882,071 to Föhl.

Föhl discloses a seatback that includes all the limitations recited in claims 25, 26, 30, and 45, as best understood. Föhl shows a seatback having a lower back part 10 (Fig. 1) joined to a seat part (see Fig. 1), an upper back part 12 (Fig. 1) that pivots about an axis relative to the lower back part out of a normal use position due to torque acting in the pivoting direction, a device for generating torque 30 (Fig. 1) including a force storage device acting irrespective of any seat occupant, means for detecting a rear-end impact including a vehicle crash sensor (see column 3, lines 24-30), an immobilization means for retention of the upper back part in the normal use position including a lever system 22 (Fig. 1), and a second immobilization means (see column 4, lines 4-6) for retention of the upper back part against a backward motion out of a safety position wherein in the event of a rear-end impact the force storage device is activated and pivoting motion is initiated.

18. Claims 25-31, 41, and 45, as best understood, are rejected under 35

U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,082,817 to Müller.

Müller discloses a seatback that includes all the limitations recited in claims 25-31, 41, and 45, as best understood. Müller shows a seatback having a lower back part 36 (Fig. 1) joined to a seat part (see Fig. 10), an upper back part 45 (Fig. 1) that pivots about an axis relative to the lower back part out of a normal use position due to torque acting in the pivoting direction, a device for generating torque 51 (Fig. 2) including a torsion spring energy storage device acting irrespective of any seat occupant, means for detecting a rear-end impact including a vehicle crash sensor (column 3, lines 61-63), an immobilization means 47 (Fig. 2) for retention of the upper back part in the normal use

position including a lever system 25,40 (Fig. 3) with two coacting levers, and a second immobilization means 37,38 (Fig. 3) including a snap-locking ratchet mechanism 37 (Fig. 3) with ratchet teeth and a counterpart ratchet element 41 (Fig. 3) for retention of the upper back part against a backward motion out of a safety position wherein in the event of a rear-end impact the force storage device is activated and pivoting motion is initiated.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 36-38, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Föhl ('071) in view of U.S. Patent No. 5,934,750 to Föhl.

Föhl ('071) discloses a seatback that is basically the same as that recited in claims 36-38, as best understood, except that the lever lacks a pawl and the upper back part lacks a counterbearing, as recited in the claims. Föhl ('750) shows a seatback similar to that of Föhl ('071) wherein the seatback has a lever system (see Fig. 6) of an immobilization means that includes a pivotally mounted pawl 30 (Fig. 6) releasably engaging a pivotally mounted immobilization lever 34 (Fig. 6) wherein the pawl braces against a counterbearing 32 (Fig. 6) that is stationary relative to an upper back part 16 (Fig. 6) and is arranged on an upper end of a support bar 14 (Fig. 6) immovably joined

at a lower back part projecting into an opening in a holding part of the upper back part. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seatback of Föhl ('071) such that the seatback has a lever system with a pivotally mounted pawl that braces against a counterbearing mounted on the upper back part and engages a pivotally mounted immobilization lever wherein the counterbearing is arranged at an upper end of a support part joined to the lower back part that projects into a holding part in the upper back part, such as the seatback disclosed in Föhl ('750). One would have been motivated to make such a modification in view of the suggestion in Föhl ('750) that the pawl, immobilization lever, and counterbearing arrangement allows for incremental adjustment of a crash head rest during normal operation.

21. Claim 39, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Föhl ('071) in view of Föhl ('750) as applied to claims 36-38, as best understood above, and further in view of U.S. Patent No. 5,694,320 to Breed.

Föhl ('071), as modified, discloses a seatback that is basically the same as that recited in claim 39, as best understood, except that the sensor lacks an electromagnet, as recited in the claim. Breed shows a seatback similar to that of Föhl ('071) wherein the seatback has an electromagnet (see claim 4) that receives a pulse from a sensor (see Fig. 10) that detects a rear-end impact. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seatback of Föhl ('071) such that the lever has an electromagnet that receives a switching pulse from the sensor, such as the seatback disclosed in Breed. One would

have been motivated to make such a modification in view of the suggestion in Breed that the electromagnet switch in the sensor allows for a switch that responds to an electrical signal from an anticipatory neural network constructed to evaluate parameters unique to the user.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

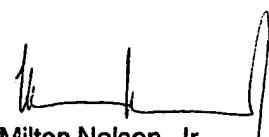
The following patents are cited to further show the state of the art with respect to seatbacks:

U.S. Pat. No. 2,973,029 to Schlosstein      U.S. Pat. No. 6,045,181 to Ikeda et al.  
U.S. Pat. No. 6,158,812 to Bonke      DE Pub. No. 31 31 633 A1 to Becker

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

  
June 15, 2003

  
Milton Nelson, Jr.  
Primary Examiner